

October 5, 2010

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

RE: Notice of Oral *Ex Parte* Communication  
CC Docket No. 02-6  
WC Docket No. 05-337  
WC Docket No. 06-122  
WC Docket No. 10-90  
GN Docket No. 09-51

Dear Ms. Dortch:

On October 4, 2010 Harold Feld, Legal Director, Public Knowledge (PK), spoke with Zach Katz, Legal Advisor to Chairman Genachowski, with regard to the above captioned matters. This notice is submitted in compliance with Section 1.1206(b) of the Commission's Rules.

PK discussed the following: 1) USF should facilitate the ability of small communities to self-provision rather than to rely exclusively on existing carriers; 2) Possible need to amend ETC certification to permit broadband cooperatives and other forms of local self-provisioning to receive USF funds; 3) Use of USF funds to facilitate policy goals of the Communications Act – particularly with regard to ease of interconnection for broadband services regardless of their regulatory classification; 3) transition of the high-cost fund from voice only access to voice and broadband access; and, 4) options for distributing USF funds.

Even within rural areas typically covered by the high-cost fund, there are gradations of “rural” based on population density. At the extreme, a single family can live many miles from the service area of a broadband access provider. Changes in technology, however, allow isolated areas with low population density to self-provision through locally-owned wireless ISPs (WISPs), broadband co-ops, non-commercial community wireless networks (CWNs), or local or tribal governments. Anecdotal evidence suggests that these alternative providers have difficulty because local telecommunications providers are unwilling to service areas with such low potential rate of return and that interconnection, particularly for information services not covered by Section 251(a), can be difficult or expensive to maintain.<sup>1</sup>

PK suggested that enabling and encouraging small communities to self-provision would bring affordable broadband to the most sparsely populated areas. The Commission

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<sup>1</sup> See “The Story of Medicine Bow,” available at: <http://www.wirelesscowboys.com/?p=24> (describing effort of local WISP to serve town of less than 280 inhabitants in southeast Wyoming).

should require that USF fund recipients offer affordable interconnection to such providers regardless of the regulatory classification of access service, and that the application process for such interconnection should be simple and easy to use in recognition that such small providers cannot readily use standard interconnection agreements. Furthermore, to the extent possible, the Commission should work with the states to modify to ETC process so that such providers could receive USF funds directly. Unfortunately, until the Commission clarifies the legal framework for USF reform, it is impossible to suggest how to modify the ETC process consistent with Section 214(e) to achieve this result.

PK stated that the statute does not prohibit the Commission from placing obligations on USF recipients that further the goal of making available to all Americans “an evolving level” of telecommunications service, Section 254(c)(1). Additional authority to impose obligations on recipients of government subsidies specifically can also be found in the Commission’s general obligation under Section 201/202, and under its responsibility to ensure carriers maintain reasonable interconnection pursuant to Sections 251(a) and 256. Such obligations do not flow as a matter of ancillary authority, but from the Commission’s ability to prioritize recipients of USF grants to ensure the specific goals of Section 254 and general goals of the Communications Act are met. At a minimum, the Commission should look to the conditions imposed by the NTIA on BTOP recipients in compliance with Section 6001(j) as a suitable model for applicants. Greater priority could be given to those applicants that demonstrated additional commitments to furthering the goals of the Act and the purposes of the National Broadband Plan.

In order to determine which people and communities are most in need of USF funds, PK suggests that income based on census tracts, the RUS definition of a economically depressed region and population density be used to determine how to prioritize which places should receive USF funds, rather than the “USF auction” proposal based on maximizing the number of subscribers served. Without this prioritization, the most sparsely populated and impoverished areas are unlikely to have anyone willing to provide service. If reverse auctions are used, the Commission must take other steps to ensure that the most sparsely populated regions are served.

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
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CC: Zach Katz